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(6)

A Plain, Honeſt, Eaſy, and Brief Determination of the late Controverſy concerning that Non-reſiſtance of the Higher Powers, *which is required by the Apoſtle in his Epiſtle to the* Romans: *Humbly ſubmitted to the Judgment of Both Houſes before they riſe, (and to the Country, when riſen) after this flaming ſtir about it.* by John Humfrey.

WHereas there were many that could not ſubmit to take the Oath of Fidelity to K. *William*, and join in the Aſſociation; and there are ſome that ſwear Allegiance to *Anne*, as Queen *de facto*, yet cannot come to an Acknowledgment of *William*'s or her Right; and all ſuch Doubts depend upon the ſole Queſtion about King *James*'s conſcionable Excluſion, whether it be juſtifiable or no, upon the account of that Scripture, *Rom.* 13. 1, 2. It is neceſſary the Apoſtle's Words be taken into Conſideration, which are theſe, *Let every Soul be ſubject unto the higher Powers, for there is no Power but of God: The Powers that be are ordained of God. Whoſoever therefore reſiſteth the Power, reſiſteth the Ordinance of God, and they that reſiſt, ſhall receive to themſelves Damnation.*

For examining the Caſe there are two Diſtinctions here to be known: To offer more, were to confound, not edify. One is, between *Subjection* and *Obedience*. It is Dr. *Feild*'s Diſtinction; and thoſe that are for Non-reſiſtance and Paſſive Obedience, gainſay it not. We are not always to obey the higher Powers, neither when they command what God forbids, or forbid what he commands; unto which, by the word *Paſſive*, they aſſent. But we are always (ſay they) to be in Subjection, and never riſe up to deliver our ſelves from them. As to this point then of *Subjection* the Caſe is to be argued. Diſtinguiſh we therefore, in the ſecond place, between theſe two things, which certainly are different, the Powers which *Are*, and the Powers which are *Not*. Underſtand it right, to wit,

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the Powers that are, and the Powers that are *not* the Powers *that are*; or *not* those which the Apostle means or intends in the Text. This Distinction is certain, clear and plain to the Intelligent, and effectual to our Purpose. The Powers, the higher Powers, in the Text, the αἱ ὔσαι ἐξουσίαι, are *the Powers that Be*. This is express, that *the Powers that Be*, are the Powers in the Text, the Powers that *are of God*, the *Ordinance* of God, and they that resist them, shall receive to themselves *Damnation*. Let this be granted to these devoutly loyal Men; but then must they grant to me again, what can't be deny'd by any, that as for the Powers that *are not* in the Text, that is, the *Powers* that are, *not* the Powers that *Be*: As they are not in the Text, they are not the Powers which are of God, not the Ordinance of God: And they that resist such (and not the Powers that *Be*) shall not receive to themselves Damnation.

Now there is one Question to be ask'd, which alone will resolve the whole Case at Stake, and that is this, What is the true Meaning of the αἱ ὔσαι ἐξουσίαι, what is really and in good earnest (so as the Conscience may rest upon it) that which is meant by the Powers that *Be*? I answer, the *Powers that be*, are the Powers according to the present Constitution. There are some higher Powers (or Kings) whose Government is absolute, and so absolute, as that the Subjects have no Liberty of Person, or Property in Goods by their Constitution. But as for others ordinarily, there is to be supposed an Original Contract, which gives the People such Liberty and Rights, and the governing Powers such a Prerogative, as extends so far, and no farther than the Compact allows. And this appears (as I have been shewn in our old chief Law-Books) by consequence, tho' no full preserved Record thereof be of it; for the Law could not maintain the People in any Rights against their Sovereign, by virtue of our Constitution, if that Constitution were not supposed to be made by such an original Agreement with him.

There is therefore two things to be considered, the *Potestas* and *Forma Regiminis*, the *Power* and the *Form* in such Governments. In regard to the one, the higher Powers are the Ordinance of *God*, with *Paul*; in the other, the Ordinance of *Man*, with *Peter*. The Form is of Men. The People between themselves, or with their Governor, agree what the Government shall be, and then the Power flows from God, to rule so, and no otherwise, but according to that *Form*; which is all one as the *Constitution*. *Potestas est a Deo*, but *Forma ab hominibus*, says the most learned Bp. *Andrews*. If then the

the higher Powers for the Administration rule not by that Form, but designedly and resolutely, and not by a Slip and Inadvertency depart from it, the Power a *Deo*, the *Potestas* fails them, and they do *cadere de Jure*, fall from their Right to our Subjection.

I do remember therefore, that at the time when the Prince of *Orange* was yet in *Holland*, but preparing for his coming into *England*, I being upon occasion admitted into the Presence of King *James* alone, to speak with him, after some Words about the Danger and sad Effects of War, and my Desire of the Prevention, his Majesty was willing I should speak freely, and I said thus to him, If it please Your Majesty, I would advise you to send presently over to the Prince, to know what he would have, and to tell him, That whatsoever he would have, you will grant it him, if it be reasonable; and that you will call a Parliament immediately, to judge whether it be reasonable or no. We proceeding farther, came to speak about Liberty of Conscience, which he was for, to bring in Popery, and I, in good earnest. I used thereupon, as near as well may be remembred, these very words; If I were your Majesty, I *would* have Liberty of Conscience, (I would have it) but if you will have that, you must part with your dispensing Power (because we would have had that (I count) by a Law, and not by his dispensing with the Law) for if you will assume a dispensing Power (said I) you take a Power over the Laws, and you change your Government from Regal to Despotical, and they will fight with you; and they fight for the Government, and you against the Government. I spake with the best Elocution I had, and he heard me to the End. And then he stept one Step backward, and said, *What you have spoken, you have honestly spoken, and conscientiously spoken, but you are out; I am a King, he but a Prince*, therefore he would not send to him. And then going on, he spake of the Prince fairly, as an excellent General, but as much concern'd, (says he) *He comes for my Crown; and no Man is so Despotical as he*; telling me, that he sware against being Statdholder, and yet he was; and falling to speak about Liberty of Conscience again, he expres'd himself very fluently, till he dismis's'd me, which he did condescendingly, and took what I said in good part. Having said this therefore to his Person, to have saved him in his Throne, I may say the same as freely in Print. A dispensing Power, indefinitely maintain'd, is a Power over the Laws: A Power over the Laws subverts the Government: A Change of the Government absolves the Subject from his Allegiance. And is this alone my

Judgment? No, but of our Lawyers. *Rex ſub Deo & ſub Lege*, ſays *Bracton*: No, but of our Nation alſo, as appears by this Vote of their Repreſentatives in the Houſe of Commons, *Jan.* 28, $168\frac{8}{9}$.

Reſolved, That King James *the Second having endeavoured to ſubvert the Conſtitution of the Kingdom, by breaking the Original Compact between King and People, and by Advice of Jeſuits, and other wicked Perſons, violated the fundamental Laws; and having withdrawn himſelf, hath abdicated the Government, and thereby the Throne is vacant.*

The Government thus *forfeited*, by his breaking the Original Contract, and by his going then away, *abdicated* alſo, according to that Vote, a Convention is called, and the Supreme Power *Perſonal* ceaſing, it deſcended into that our Politicks call *Real*, that is, it by *Eſcheat* (to uſe *Hooker*'s Word) fell on the Community or People; Not for them to govern, (I muſt ſay) but to ſet up a Government; which is, in truth, a greater Power than that of *Parliament*: For a *Parliament* makes Laws for the *Adminiſtration* only of the Government: But a *Convention* (repreſenting the forty Counties) might make thoſe as they agreed for the *Conſtitution*. The Conſtitution of a Government, we are to know, is the Agreement of the People in ſetting it up, and there are three things go into it. The firſt thing they muſt agree in, is what *Kind* of Government it ſhall be; and this our *Convention* thought fit to be the ſame as it was, a *Monarchy*, but Mixt, Legal, Parliamentary, ſo as to be ſtill a *Free State*, not to be violated by the Monarch. The ſecond thing, is, what, or who the Perſons ſhall be that govern; and theſe were ſoon determined, King *William* and Queen *Mary*, and after them our preſent Queen; and ſo far they went. The third thing they muſt agree in, is, What Extent their Government ſhall have, or what Qualifications ſhall be put on it, which, what they be, are to be read in the Act. And here may ſome, who love their Country, be ready hereafter to bethink the Opportunity this *Convention* hath ſlipt, in not declaring more fully the State hereof, and in putting no farther Limitations on it, of the like great Moment as this one is, that no Papiſt ſhall reign over us. For upon account hereof, the *Hanover* Family being of the Proteſtant Line, is to ſucceed, and their Title to the Throne ſtands good thereupon, but not on equal foot with the Queen's, for Her's is expreſly eſtabliſh'd by the *Conſtitution* it ſelf, the Act of the *Convention*, ſo as no Prince can have a Title more manifeſt and unconteſtable upon Earth. But this Conſtitution now leaving the People at Liberty after her,

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to have chose what Government or Governor they pleased, an Act of Parliament is passed under *William*, to confine this Liberty, and settle the Throne in that Family; which Act is a Law indeed of the *Administration*, not *Constitution*, yet strengthened by a Statute under *Elizabeth*, which makes such an Act to bind the Descent of the Crown; and more by the Oath for the Succession, which being enjoin'd by the supreme Authority, does oblige those to take it that yet have not, and leaves no scruple to any, unless this in hand, in reference to the mentioned Text of the *Romans*, and King *James*'s Deposition.

Having thought therefore long on the Matter, I have pitcht on this as the fundamental Exposition of the Place, that the *Powers that Be*, are the Government, or Governors, of every Country, according to its Constitution: And consequently that the Subjection or Non-resistance that is required of God, as due to the higher Powers, is a Subjection no other but according to the same. The Scripture, it is certain, does not go about to prescribe to, alter or meddle with the Governments of Nations; but it supposes a Government in every Country, and commands Subjection and Non-resistance to the Government *that is*. We overturn all, if we preach otherwise than thus. *Evangelium non abolet Politias.*

And now then let us come to the Government of our Nation; for we know, (and none pretend more than the Loyalist to stand by it) is Βασιλεία νομική, a Government regulated by the Laws, and those no other than such as the People themselves yield to the making by their Representatives in Parliament; that is, *Quas vulgus elegerit*; which renders it a *Free State*, that is ever to be maintained. It is called a Legal and Regal Monarchy, because it is a Government by the Statutes of the Realm, and not according to the Will of the Lord. And such being the Constitution of our *Great Britain*, the Case, by the Precedent of King *James*, is resolved, that if any King hereafter (for of our Queen we have no fear) shall rule so, as really designing (that if he be not hindred, he will effect it) to change the Government, or *Manner of the Kingdom*, as the Scripture expresses it, from Legal to Arbitrary, from Regal to Despotical, and it shall please God to give the People, who are free Subjects, the happy Means of a Deliverance, they do not resist in this Case, or rise up against the *Powers that be*, the Powers in the Text, the Powers that are of God, the Ordinance of God; but the Powers not in the Text, the Powers that are not of God, the Powers which

which are not the Ordinance of God, and it being indeed a rising in defence of, or *for* the Government, and not *against* the Government, and no resisting the *Powers that be*, they shall not receive to themselves Damnation. This is the Case of the Revolution.

It is objected by the conscientious Non-juror, that the Church in her Homilies; all her chief Divines and Bishops, in their Books and Sermons, have constantly preached up Non-resistance and Passive Obedience, which is all one with *Subjection to the higher Powers* commanded by the Apostle. And this indefinitely is true, but the *Subjection* must be understood to be to the *Apostles* higher Powers, the Powers that *be*, the Powers in the Text, the Powers (I have said) according to our Constitution: And as for any Powers that are otherwise, and so not in the Text, neither they nor the Apostle ever required Subjection. This Answer is satisfactory, and I have something to say more, for *Cases may fall out* (says *Bilson*, that most judicious and excellent Prelate) *even in Christian Kingdoms, where People may plead their Right against the Prince, and not be charged with Rebellion. If a Prince shall go about to subject his Kingdom to a Foreign Realm, or change the Form of a Common-wealth from Impery to Tyranny.* This Instance has he, as I before. I will add, that *Barclay* and *Arnisæus*, (those chief *French* Authors) who maintain their King's Authority to be inviolable, do themselves admit of such, and these very Exceptions, *Si Regnum alienet, si Rempublicam everterе conetur.* And yet there is no Case for all that, say they, wherein we may take Arms against the King, because in such Cases the King does *Regis Personam exuere:* And what is that, but in such Cases he is not the *higher Powers* in the Text (or the Powers of the Apostle) to whom Non-resistance is required. There are several other Cases *Grotius* reckons up, but this is beyond my Line; and forasmuch as the *End* in a People's setting up a Governour is greater, (that is, of more Importance) than the *Means*, the Argument for the People against the Prince, in such Cases, is irrefragable.

For all this, to maintain Non-resistance, it is pleaded by some, that the Prince of *Orange* came, and was invited to other Ends, and not to depose King *James*; only he went away, abdicated, and left the Government upon our Hands. Very pert, and in some measure true; but had he done nothing, and was nothing done, to make him fear to stay? When the Prince came with Forces, and the Nation join'd with him, to deliver themselves from Popery and Arbitrary

trary Power by his Means; and a Convention (which repreſents the whole People) ſet up another King, and recall'd not him, which is, in Fact and Deed, all that is in Reſiſtance and Depoſition; what an idle thing is it, to maintain it unlawful to reſiſt, or take up Arms, in any Caſe, againſt a King (even in ſuch a one as makes him none) and yet ſlabbber, and juſtify our Revolution.

There are two Reaſons now for ſpeaking of this Point. The one is, becauſe there has been of late a great ſtir made by a Sermon preach'd on this Subject before the Queen, I ſuppoſe as innocently as loyally meant, but brought into Diſpute; and it is meet, that all ſcrupulous good Perſons ſhould be ſatisfy'd about the Government. The other is, to the end that thoſe whom it pleaſes God hereafter to put over us, for to govern, may not be tempted by Love of their People, or Liberality of Parliaments, to make ſuch uſe of their raiſed Strength as our Neighbour Kings have done, to go out of the Circle of our *Britiſh* Conſtitution: Eſpecially knowing that the Spirit of the Nation, and the Conſcience of it alſo, together with the *Form* of Government, is ſuch, as not to bear, that under King *James* we ſhould be *Papiſts*, and under any Succeſſor, be *Slaves*.

This Paper (or Sheet) is taken from a Book newly come out of the Preſs, a Shilling Book, entituled, *Free Thoughts upon theſe Heads, Of Predeſtination, Redemption, The Salvability of the Heathen, The Judaical Covenant, Juſtification, The Judge of Faith and the Scripture, Venial Sin, Liturgical and Conceived Prayer, Demonſtrative Preaching, The Authority of the Laws of Men, The Power of the Magiſtrate about Religion, Subjection to our preſent Queen.* The laſt whereof is *Verbatim* this Determination.

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THere falling out here a blank Side to ſpare, I will fill it with ſome Quotations, which I purpoſely omitted (to avoid ſwelling) in the due place. *Barclaius ait amitti Regnum* (ſays *Grotius*) *ſi Rex hoſtili animo in totius populi exitium feratur: Quod concedo, conſiſtere enim ſimul non poſſunt voluntas imperandi, & voluntas perdendi*, De jure Bel. l. 1. c. 4. *Quid ergo? Nulli ne caſus incidere poſſunt*, (ſays *Barclay* himſelf) *quibus populo in Regem arma capere jure ſuo liceat? Nulli certe quamdiu Rex manet: Duos autem caſus invenio, quibus Rex ex rege non Regem facit.* Adverſus Monarchomacos, l. 3. c. 16. As for our *Bilſon*, he ſets himſelf, *de Induſtria*, to maintain the Prince's Authority againſt the Pope, and yet in defending the Proteſtants in their Stirs in *Germany*, *France*, *Scotland*, *I will not* (ſays he) *pronounce all that reſiſt to be Rebels. Caſes may fall out*, as I have cited two of them, and then he further ſays, *In theſe and other Caſes that might be named, if the Nobles and Commons join together, to defend the ancient and accuſtomed Liberty, Regiment, and Laws, they may not be accounted Rebels.* In his Book (and excellent Book) of the *true Difference between Chriſtian Subjection, and Unchriſtian Rebellion*, p. 520. In fine, the Pope may not depoſe Princes; but the whole Realm may defend their Rights againſt them, according to this eminent Biſhop's Judgment; *I deny'd* (ſays he) *that Biſhops had Authority to preſcribe Conditions to Kings when they crown'd them, but I never deny'd that the People might preſerve their Foundation-Freedom, and Form of their Common-wealth, which they fore-prized when they conſented to have a King*, p. 521. There being yet a Line or two to fill, I will ſet down this Saying, becauſe I like it, tho' it be an Overplus, and not to this, but to other good Purpoſe: *Quæ ex jure naturæ dependent iis Princeps etiam tenetur, quia licet ſit dominus aliorum, ſubditus tamen eſt Naturæ, & civis Mundanus.* Arniſæus de Jure Majeſtatis Principum ſemper inviolabile, l. 1. c. 3.

FINIS.